

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 13312 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

JAGDISHBHAI JIVANLAL BHIMANI

Versus

STATE OF GUJARAT

Appearance:

MR SURESH M SHAH and MEHUL SHAH for Petitioner
MR A.G.URAIZEE, ASSISTANT GOVERNMENT PLEADER for the
Respondent .

CORAM : MR.JUSTICE J.N.BHATT

Date of decision: 27/03/96

ORAL JUDGEMENT

Whether the impugned order rejecting the application under Section 20 of the Urban Land (Ceiling and Regulation) Act, 1976 ('the ULC Act' for short) for exemption of agricultural land under the provisions of the ULC Act bypassing and without consideration of the

guidelines contained in the letter dated 19.12.1977 issued by the Government of India to the State Government is valid, legal and justified or not, is the central theme of the present petition under Articles 226 and 227 of the Constitution of India.

A few relevant facts may be stated first. Agricultural land bearing survey number 117 (old No.89) of village Anandpar (Navagam) admeasuring 11 acres- 3 gunthas used for agricultural purposes was purchased by the father of the petitioner on 25.5.1981 by a registered sale deed . The case of the petitioner is that he applied for exemption for the said land for agricultural purpose under Section 20(1) of the ULC Act on 20.7.1989 contending that the said land had been used as agricultural property. Thus, the contention of the petitioner was that the land in question is agricultural land and it is being used as such for the purpose of agricultural operation. The respondent-authority refused permission holding that the land in question is reserved in the industrial zone. In other words, application for exemption under Section 20 came to be rejected on the ground that it was not in agricultural zone. Being aggrieved by the said order of the respondent recorded on 11.8.1994, the petitioner has filed this petition under Articles 226 and 227 of the Constitution of India. Thus, exemption application came to be rejected only on the ground that it is situated in a non-agricultural zone.

It appears that the respondent failed to notice the guidelines of the Government of India contained in the letter dated 19.12.1977 produced at Annexure 'A' to the petition, which inter alia provides that under Section 20(1)(a) of the ULC Act, State Government may, in the public interest, exempt lands which are entered in the land records before 'the appointed day' as being used mainly for agriculture and are being actually so used, even if they are specified in the master plan for a purpose other than agriculture. The exemption should be granted upon the following conditions as per the said letter:

- (1) That the land should actually be used only for agriculture.
- (2) That whenever the land is proposed to be used for any other purpose, prior intimation should be given to the Government and the competent authority concerned.

(3) That the land should not be transferred by sale, gift, lease or otherwise, without the previous permission of the Government and that the land should not be subdivided and sold. (There is, however, no objection to mortgage of the land without possession to support a loan from a bank or financial institution), and

(4) That if at any time the State Government is satisfied that any of the conditions (1) to (3) above is violated, or if the State Government require the exempted land for its own use, then the State Government may withdraw the exemption under sub-section (2) of Section 20.

It is very clear from the aforesaid guidelines that it is open for the State Government to consider the question of grant of exemption to agricultural land under Section 20(1)(a) even if the same is specified in the master plan for the purpose other than agriculture. In the present case, the State Government rejected the exemption application solely on the ground that it is specified in the master plan for the purpose other than agriculture viz. industrial zone. Therefore, the finding and the ultimate conclusion recorded by the State Government is contrary to the aforesaid guidelines. It appears that the guidelines contained in the letter dated 19.12.1977 are directions issued by the Central Government to the State Government exercising statutory powers under Section 36 of the ULC Act. Section 36 reads as under :

"36 (1) The Central Government may give such directions to any State Government as may appear to the Central Government to be necessary for carrying into execution in the State any of the provisions of this Act or any rule made thereunder.

(2) The Central Government may require any State Government to furnish such returns, statistics, accounts and other information, as may be deemed necessary."

It could very well be seen from the aforesaid provisions that the Central Government can issue such directions to the State Government as may appear to the Central Government to be necessary for proper implementation and execution of the provisions of the ULC Act and the Rules thereunder in the State. As per the guidelines contained in the aforesaid letter of the Central Government, it is open for the State Government to exempt under Section 20(1)(a) lands which are entered in the land record before the appointed day, as being used mainly for

agriculture and are being actually so used even if they are specified in the master plan for a purpose other than agriculture, with conditions. This power is given to the State Government. Such guidelines are required to be taken into consideration while considering the question of exemption. In the circumstances, it is not correct to say that State Government is bound to reject an application for exemption of agricultural land under Section 20(1) if agricultural land is specified in the master plan for non-agricultural purpose. It is for the State Government to decide whether there is any case for grant of exemption or not. Notwithstanding anything, State Government cannot pass an order saying that application has to be rejected mainly on the ground that agricultural land is not specified in the agricultural zone. State Government is obliged to consider the guidelines contained in the aforesaid letter and then to decide the merits of the matter in accordance with law. Having not been so done and neglecting to consider the aforesaid guidelines contained in the Government of India's letter, the impugned order is required to be quashed and set aside with a direction to re-consider the same and take a decision afresh in light of the facts and circumstances of the present case.

In the result, the petition is partly allowed. The impugned order of the respondent dated 11.8.1994 is quashed and set aside and the matter is remitted back to the respondent with a direction to consider the aforesaid guidelines and to adjudicate upon the question in focus under Section 20(1)(a) of the ULC Act afresh in light of the facts and circumstances, after giving an opportunity to the petitioner in accordance with law, expeditiously. Rule is made absolute to the aforesaid extent with no order as to costs.
